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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

United States District Court  
Southern District of Texas  
FILED

NOV 07 2003

Michael N. Milby  
Clerk of Court

LUIS ALEJANDRO GARZA

\*

\*

VS.

\*

CIVIL ACTION NO. B-02-154

\*

FEDERAL TORT CLAIMS ACT

THE UNITED STATES OF  
AMERICA

\*

\*

**PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED  
COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Luis Alejandro Garza, Plaintiff in the above-entitled and numbered cause, and moves this court for leave to amend his Original Complaint and in support thereof would respectfully show as follows:


1.

Plaintiff filed his complaint before he had the opportunity to obtain documents and information in discovery to more fully understand his claim. Now that he has obtained some information in the discovery process, Plaintiff wishes to amend his complaint to be more specific in his allegations.

2.

Attached hereto as Exhibit 1 is Plaintiff's proposed First Amended Complaint which he asks to file with the court.

Respectfully submitted,



Barry R. Benton  
284 Ebony Avenue  
Brownsville, Texas 78520  
Telephone (956) 546-9900  
Facsimile (956) 546-9997  
Federal I.D. No. 3968  
ATTORNEY IN CHARGE FOR  
PLAINTIFF

**CERTIFICATE OF CONFERENCE**

I, Barry R. Benton, attorney for Plaintiff, have conferred with Defendant's counsel, the Honorable Nancy L. Masso, Assistant United States Attorney, and she has indicated that she is opposed to this motion.



Barry R. Benton

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> day of November, 2003, the foregoing Plaintiff's First Amended Original Complaint was forwarded via regular mail to counsel of record, to wit:

Ms. Nancy L. Masso  
United States Assistant Attorney  
600 E. Harrison Ave., No. 201  
Brownsville, Texas 78520

**Via Regular mail**



Barry R. Benton

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

LUIS ALEJANDRO GARZA	*	
	*	
VS.	*	CIVIL ACTION NO. B-02-154
	*	FEDERAL TORT CLAIMS ACT
THE UNITED STATES OF	*	
AMERICA	*	

**ORDER GRANTING PLAINTIFF'S MOTION TO LEAVE TO AMEND  
COMPLAINT**

This day Plaintiff's Motion for Leave to File First Amended Complaint was presented to the court and it is the opinion and order of the court that said motion be granted.

It is ordered that Plaintiff is granted leave to File his First Amended Complaint.

Signed the \_\_\_\_\_, 2003, at Brownsville, Texas 78520.

\_\_\_\_\_  
Judge Presiding

Mr. Barry R. Benton, (956) 546-9997  
Ms. Nancy L. Masso (956) 548-2549

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

LUIS ALEJANDRO GARZA	*	
	*	
VS.	*	CIVIL ACTION NO. B-02-154
	*	FEDERAL TORT CLAIMS ACT
THE UNITED STATES OF	*	
AMERICA	*	

**FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LUIS ALEJANDRO GARZA, Plaintiff, complaining of THE UNITED STATES OF AMERICA, Defendant, and for cause of action would respectfully show as follows:

1.

This suit is brought under the Federal Torts Claims Act, 28 U.S.C. section 2671 et. seq., alleging that the negligence of employees of the Bureau of Prisons was a proximate cause of severe, personal injuries suffered by Plaintiff.

2.

**PARTIES**

Plaintiff is a resident of Brownsville, Cameron County, Texas is presently in prison in the federal penitentiary at Pollock, Louisiana.

3.

**JURISDICTION**

This court has jurisdiction pursuant to 28 U.S.C. section 1346 (b)

Exhibit  
1

(1) as this is a civil action for money damages against the United States of America.

4.  
**VENUE**

Venue is appropriate in this court pursuant to 28 U.S.C. section 1402 (b) as Plaintiff resides within this district and division.

5.  
**PREREQUISITES TO SUIT**

Pursuant to 28 U.S.C. section 2675 Plaintiff's claim was presented to the Bureau of Prisons within two years of the occurrence in question and this suit was filed within six months of the denial of Plaintiff's claim by correspondence from the Bureau of Prisons dated March 4, 2002.

6.  
**FACTUAL ALLEGATIONS**

On or about February 6, 2001, Plaintiff was a prisoner at Defendant's Three Rivers Correctional Facility at Three Rivers, Texas. Then and there he was attacked and severely beaten by multiple inmates.

7.  
The attack was later determined by prison officials to be gang related i.e. members of a gang called the "Border Brothers" were reportedly retaliating against Plaintiff and four others inmates they believed were part of another prison gang called the "Texas Syndicate".

8.  
At all relevant times employees of the Federal Bureau of Prisons

knew that gang violence was and is a real and continuing threat to the safety and welfare of inmates and prison employees at the Three Rivers Facility and other penitentiaries.

9.

At the time Plaintiff was beaten he was in the facility's recreation yard where over a hundred inmates were to be supervised by one guard.

10.

During the time in question the guard responsible for supervising inmates in the recreational yard was under specific post orders to patrol and supervise the recreation yard and to prevent inmates from gathering into large groups.

11.

In contravention of these orders, the guard was not patrolling the recreation yard or supervising the inmates. Over the period of about an hour approximately 70 inmates gathered in a group, first near the basketball courts and then the handball courts.

12.

After amassing, the group of inmates split into two parts, with one group of about 35 inmates attacking Plaintiff and the other group attacking other inmates, one of which was also severely injured.

13.

#### **DUTY AND BREACH OF DUTY**

Pursuant to 18 U.S.C Section 4042 and the Eighth amendment to the United States Constitution Defendant is obligated to keep Plaintiff

safe and free from harm. The failure of the guard at the recreation yard to follow specific post orders pertaining patrolling and supervising and prohibiting the gathering of inmates into large groups was a proximate cause of the assault on Plaintiff and the serious and permanent injuries he suffered.

14.

**DAMAGES**

As a proximate result of Defendant's negligence Plaintiff was injured, and although he is not trained in the medicine or the healing arts and is unable to describe with particularity his injuries, he alleges to have suffered a fracture of his skull, loss of hearing in his left ear, severe headaches, misalignment of his jaw and frequent, excruciating headaches.

15.

As a proximate result of Defendant's negligence, Plaintiff has suffered severe physical pain and mental anguish in the past and, in reasonable probability, will suffer pain and mental anguish for the rest of his life.

16.

As a further proximate result of Defendant's negligence, Plaintiff has suffered a loss of earnings in the past and, in reasonable medical probability, will suffer a loss of earning capacity in the future.

17.

As a further proximate result of Defendant's negligence, Plaintiff has suffered disfigurement in the past and, in reasonable medical probability, will suffer disfigurement for the rest of his life.

18.

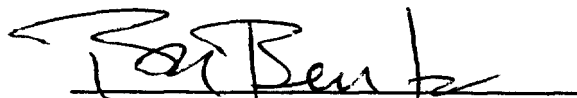
As a further proximate result of Defendant's negligence, Plaintiff has suffered physical impairment and loss of enjoyment in life and, in reasonable medical probability, will suffer physical impairment and loss of enjoyment of life in the future.

19.

**PRAYER**

WHEREFORE, Plaintiff prays that after final hearing that he have and recover from Defendant judgment in the sum of \$500,000.00, costs of court, and such further relief to which he may be justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry R. Benton", written over a horizontal line.

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284 Ebony Avenue  
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ATTORNEY IN CHARGE FOR  
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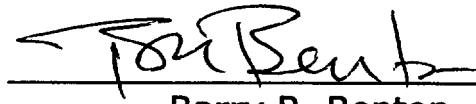


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7th day of November, 2003, the foregoing Plaintiff's First Amended Original Complaint was forwarded via regular mail to counsel of record, to wit:

Ms. Nancy L. Masso  
United States Assistant Attorney  
600 E. Harrison Ave., No. 201  
Brownsville, Texas 78520

**Via Regular mail**

  
\_\_\_\_\_  
Barry R. Benton